

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Refer Reply To:
CC:PSI:B04
PLR-129958-10
Date:
December 20, 2010

In Re:

Legend:

Taxpayer =
Spouse =
Trust =

Tax Return Preparer =
Son =
Daughter =
Date =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Year 10 =
Year 11 =
Year 12 =

Dear :

This letter responds to your authorized representative's letter of July 15, 2010, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to allocate Taxpayer's generation-skipping transfer (GST) exemption to a trust.

The facts and representations submitted are summarized as follows. Taxpayer created Trust on Date for the benefit of Son and his issue and Daughter and her issue. The terms of Trust provide that upon the death of Taxpayer and Spouse, Trust will be divided into two trusts, one for the benefit of Son and his issue (Son's Trust), and the other for the benefit of Daughter and her issue (Daughter's Trust). Son's Trust and Daughter's Trust have GST potential.

In Years 1 through 10, Taxpayer made gifts to Trust. Years 1 through 4 are prior to December 31, 2000. Years 5 through 10 are after December 31, 2000.

In Years 1 through 7, Taxpayer and Spouse retained Tax Return Preparer to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. On these forms, Taxpayer and Spouse consented, under § 2513, to treat the gifts made by each in Years 1 through 7 as made by both of them. However, Tax Return Preparer did not allocate Taxpayer's GST exemption to his portion of the Years 1 through 4 gifts to Trust. Taxpayer did not file Forms 709 for Years 8 through 10.

Spouse died in Year 11. Taxpayer died in Year 12. Shortly after Taxpayer's death, it was discovered that Taxpayer's GST exemption had not been allocated to his portion of the Years 1 through 4 gifts to Trust and that Taxpayer had not filed any Forms 709 for Years 8 through 10.

It is represented that Taxpayer has sufficient GST exemption available to allocate to his portion of the Years 1 through 4 gifts to Trust. Pursuant to § 2632(c) and § 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations, Taxpayer's GST exemption was automatically allocated to his portion of the Years 5 through 10 gifts to Trust.

The personal representatives of Taxpayer's estate are requesting an extension of time to allocate Taxpayer's available GST exemption to his portion of the Years 1 through 4 gifts to Trust.

Law and Analysis:

Section 2513(a) provides, generally, that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides, for the years at issue, that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the personal representatives of Taxpayer's estate are granted an extension of time of 120 days from the date of this letter to allocate Taxpayer's available GST exemption to his portion of the Years 1 through 4 gifts to Trust. The allocations will be effective as of the date of the transfers and will be based on the fair market value for federal estate tax purposes of the transfers on the dates each transfer was made.

The personal representatives should make the allocations on supplemental Forms 709 for Years 1 through 4. The supplemental Forms 709 should be filed on behalf of the estate with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The ruling(s) in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Lorraine E. Gardner

By: _____
Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: